

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NEW YORK STATE DEPARTMENT OF	:	CIV. ACTION NO.:
ECONOMIC DEVELOPMENT f/k/a THE	:	
NEW YORK STATE DEPARTMENT	:	07 CV 03786 (RMB)
OF COMMERCE ECONOMIC	:	
DEVELOPMENT,	:	
an official agency within the administrative	:	
offices of the State of New York,	:	<u>PLAINTIFF'S APPLICATION TO</u>
	:	<u>THE CLERK OF THE COURT FOR</u>
Plaintiff,	:	<u>ENTRY OF DEFAULT AND</u>
	:	<u>CERTIFICATE OF DEFAULT</u>
v.	:	
	:	
MICHAEL NNAMDI STEWART, an	:	
individual and MOSAYK, INC., a North	:	
Carolina corporation	:	
	:	
Defendants.	:	

Pursuant to Rule 55(a) the Federal Rules of Civil Procedure and Local Civil Rule 55.1, Plaintiff New York State Department of Economic Development ("NYSDED"), through its undersigned counsel, hereby applies to the Clerk of the Court for Entry of Default and for a Certificate of Default against Defendants Michael Nnamdi Stewart and Mosayk, Inc. (collectively "Defendants").

In view of the present application and accompanying Affidavit, NYSDDED

respectfully requests that the Clerk enter default and issue a certificate of default against Defendants.

Dated: June 29, 2007

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: 

G. Roxanne Elings (GE 8321)
Daniel I. Schloss (DS 7373)
David Saenz (DS 1976)
MetLife Building
200 Park Avenue, 34th Floor
New York, NY 10166
Telephone: (212) 801-9200
Facsimile: (212) 801-6400

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT f/k/a THE NEW YORK STATE DEPARTMENT OF COMMERCE ECONOMIC DEVELOPMENT, an official agency within the administrative offices of the State of New York,	:	CIV. ACTION NO.:
	:	
	:	07 CV 03786 (RMB)
	:	
	:	
Plaintiff,	:	<u>AFFIDAVIT OF DANIEL I.</u>
	:	<u>SCHLOSS IN SUPPORT OF</u>
	:	<u>PLAINTIFF'S APPLICATION FOR</u>
	:	<u>ENTRY OF DEFAULT AND</u>
	:	<u>CERTIFICATE OF DEFAULT</u>
v.	:	
	:	
MICHAEL NNAMDI STEWART, an individual and MOSAYK, INC., a North Carolina corporation	:	
	:	
	:	
Defendants.	:	

I, Daniel I. Schloss, being duly sworn, hereby state that:

1. I am an attorney for Plaintiff New York State Department of Economic Development ("NYSDED") in the above-captioned action.
2. NYSDDED filed a Complaint against the Defendants Michael Nnamdi Stewart and Mosayk, Inc. (collectively "Defendants") on May 14, 2007.
3. The Complaint was served upon Defendant Michael Nnamdi Stewart on May 15, 2007. A copy of the Affidavit of Service is attached hereto as Exhibit A.
4. The Complaint was served upon Defendant Mosayk, Inc. on May 21, 2007. A copy of the Affidavit of Service is attached hereto as Exhibit B.
4. Defendants are not infants, in the military, or incompetent persons.
5. Defendants filed a Motion for Dismissal with the Court on May 30, 2007. Judge Berman denied this motion *sua sponte* on June 1, 2007 and ordered that the parties appear at a conference before him on June 22, 2007. A copy of the Defendants' Motion for Dismissal and Judge Berman's order is attached as Exhibit C.

EXHIBIT A



Demovsky Lawyer Service

Premier Nationwide Document Retrieval
and Process Service Company

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEW YORK STATE DEPARTMENT OF
ECONOMIC DEVELOPMENT f/k/a
THE NEW YORK STATE DEPARTMENT
OF COMMERCE ECONOMIC DEVELOPMENT,
an official agency within the administrative offices of
the State of New York

Plaintiff,

Case No. 07 CV 3786
(Judge Berman)

-against-

AFFIDAVIT OF SERVICE

MICHAEL NNAMDI STEWART,
an individual and MOSAYK, INC.,
a North Carolina Corporation.

Defendants.

STATE OF NORTH CAROLINA)
S.S.:
COUNTY OF WAKE)

Pauline Purvis, being duly sworn, deposes and says that he/she is
over the age of eighteen years, is an agent of the attorney service, D.L.S., Inc., and is not a party
to this action.

That on the 15th day of May, 2007, at approximately the time of 6:42pm
deponent served a true copy of the SUMMONS IN A CIVIL CASE; COMPLAINT AND
DEMAND FOR JURY TRIAL (WITH EXHIBIT A); INDIVIDUAL PRACTICES OF HON.
RICHARD M. BERMAN; INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE GABRIEL
W. GORENSTEIN; AND ELECTRONIC FILING INSTRUCTIONS upon MICHAEL
NNAMDI STEWART at 4649 Vendue Range Drive, Raleigh, NC, by personally delivering and
leaving the same with his girlfriend/co-tenant, *Daphnie Faulkner*, a person of
suitable age and discretion at that address, the actual place of residence. At the time of service,
deponent asked whether MICHAEL NNAMDI STEWART is in active military service for the
United States of America or for the State in any capacity whatever or dependent upon a person in
active military service and received a negative reply.



Demovsky Lawyer Service

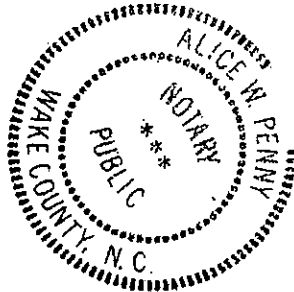
Premier Nationwide Document Retrieval
and Process Service Company

Daphnie Faulkner is a Blk Female, approximately ²⁵⁻³⁰ years of
age, stands approximately 5' feet 5" inches tall, weighs approximately 140 - 160 pounds with
Blk hair. ^{8"}

Frankie Davis
PROCESS SERVER

Sworn to before me this
25 day of May, 2007

[Signature]
NOTARY PUBLIC
my Comm exp 1/19/2010





Demovsky Lawyer Service

Premier Nationwide Document Retrieval
and Process Service Company

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NEW YORK STATE DEPARTMENT OF
ECONOMIC DEVELOPMENT f/k/a
THE NEW YORK STATE DEPARTMENT
OF COMMERCE ECONOMIC DEVELOPMENT,
an official agency within the administrative offices of
the State of New York

Plaintiff,

Case No. 07 CV 3786
(Judge Berman)

-against-

AFFIDAVIT OF MAILING

MICHAEL NNAMDI STEWART,
an individual and MOSAYK, INC.,
a North Carolina Corporation.

Defendants.

-----X
STATE OF NEW YORK)
 S.S.:
COUNTY OF NEW YORK)

HOWARD D. GOLDMAN, being duly sworn, deposes and says that he is over the
age of eighteen years, is an employee of the attorney service, D.L.S., Inc., and is not a party to
this action.

That on the 25th day of May, 2007, deponent served a true copy of the SUMMONS
IN A CIVIL CASE; COMPLAINT AND DEMAND FOR JURY TRIAL (WITH EXHIBIT A);
INDIVIDUAL PRACTICES OF HON. RICHARD M. BERMAN; INDIVIDUAL PRACTICES
OF MAGISTRATE JUDGE GABRIEL W. GORENSTEIN; AND ELECTRONIC FILING
INSTRUCTIONS upon MICHAEL NNAMDI STEWART, by first class mail, by enclosing a
true copy thereof in a securely sealed and postpaid wrapper with the words "PERSONAL AND
CONFIDENTIAL" written on the same envelope, and not indicating on the outside that it is from
an attorney or concerns an action against the person to be served, and depositing the same into an



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Premier Nationwide Document Retrieval
and Process Service Company

official depository maintained by the Government of the United States, City and State of New
York, addressed as follows:

MICHAEL NNAMDI STEWART
4649 Vendue Range Road
Raleigh, NC 27604

HOWARD D. GOLDMAN
#932192

Sworn to before me this
25th day of May, 2007

NOTARY PUBLIC

JONATHAN T. RIPPS
Notary Public, State of New York
NO. 01R16109718
Qualified in Rockland County
Certificate Filed in New York County
Commission Expires May 17, 2008

EXHIBIT B

MAY.25.2007 3:11PM DLS, INC.

NO. 400 F.4



Demovsky Lawyer Service

Premier Nationwide Document Retrieval
and Process Service Company

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NEW YORK STATE DEPARTMENT OF
ECONOMIC DEVELOPMENT f/k/a
THE NEW YORK STATE DEPARTMENT
OF COMMERCE ECONOMIC DEVELOPMENT,
an official agency within the administrative offices of
the State of New York

Plaintiff,

Case No. 07 CV 3786
(Judge Berman)

-against-

AFFIDAVIT OF SERVICE

MICHAEL NNAMDI STEWART,
an individual and MOSAYK, INC.,
a North Carolina Corporation.

Defendants.

-----X
STATE OF NORTH CAROLINA)
S.S.:
COUNTY OF WAKE)

Pauline Purvis, being duly sworn, deposes and says that ~~he~~/she is
over the age of eighteen years, is an agent of the attorney service, D.L.S., Inc., and is not a party
to this action.

That on the 21st day of May, 2007, at approximately the time of 12:42 pm
deponent served a true copy of the SUMMONS IN A CIVIL CASE; COMPLAINT AND
DEMAND FOR JURY TRIAL (WITH EXHIBIT A); INDIVIDUAL PRACTICES OF HON.
RICHARD M. BERMAN; INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE GABRIEL
W. GORENSTEIN; AND ELECTRONIC FILING INSTRUCTIONS upon MOSAYK, INC. o/o
North Carolina Secretary of State at 2 South Salisbury Street, Raleigh, NC, by personally
delivering and leaving the same with *Redonno Casman* who informed deponent
that holds the position of Agent with that company and is authorized by appointment to
receive service at that address.

MAY.25.2007 3:11PM DLS, INC.

NO. 460 F.S



Demovsky Lawyer Service

Premier Nationwide Document Retrieval
and Process Service Company

Redonno Casmon is a Blk Male, approximately 30 years of
age, stands approximately 5' feet 7" inches tall, weighs approximately 190 pounds with
Blk hair.

Pauline Turris
PROCESS SERVER

Sworn to before me this
25 day of May, 2007

[Signature]
NOTARY PUBLIC

my comm. exp 1/19/2010



EXHIBIT C

CASE NUMBER:
07 CV 3786

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

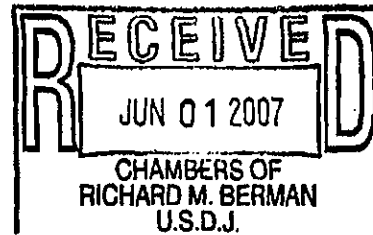
NEW YORK STATE DEPARTMENT OF
ECONOMIC DEVELOPMENT f/k/a THE
NEW YORK STATE DEPARTMENT OF
COMMERCE ECONOMIC
DEVELOPMENT,
an official agency within the administrative
offices of the State of New York,

Plaintiff,

v.

MICHAEL NNAMDI STEWART, an
individual and MOSAYK. INC., a North
Carolina corporation

Defendants,



MEMO ENDORSED

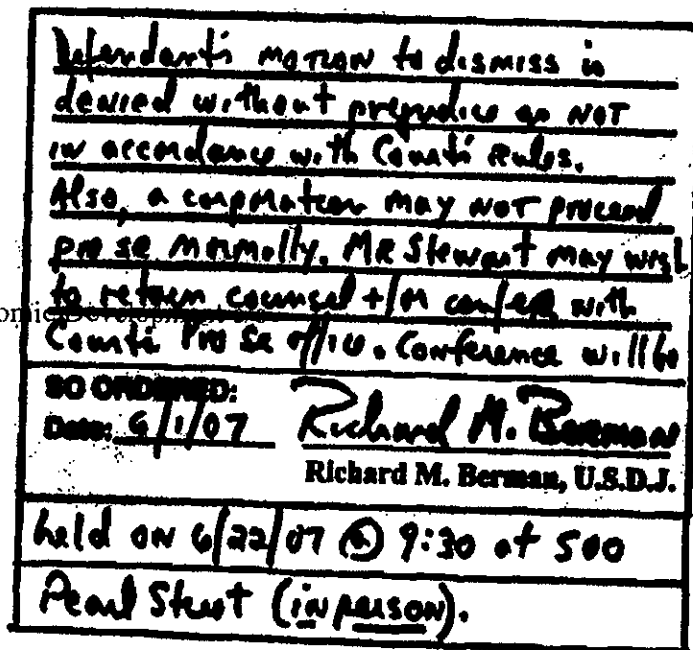
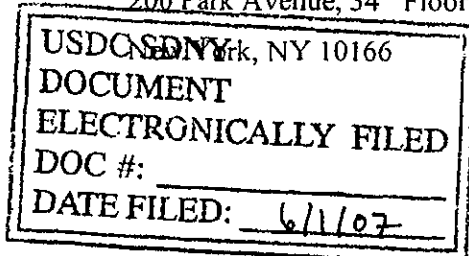
CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following parties in this matter (CASE NUMBER: 07 CV 3786), by U.S. First Class mail, postage prepaid, this 30th day of May 2007.

Michael Nnamdi Stewart
4649 Vendue Range Drive
Raleigh, North Carolina 27604

Served Upon:

New York State Department of Economic Development
Greenberg Traurig LLP
Attorneys for Plaintiff
200 Park Avenue, 34th Floor
New York, NY 10166



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NEW YORK STATE DEPARTMENT OF
ECONOMIC DEVELOPMENT f/k/a THE
NEW YORK STATE DEPARTMENT OF
COMMERCE ECONOMIC
DEVELOPMENT,
an official agency within the administrative
offices of the State of New York,

Plaintiff,

v.

MICHAEL NNAMDI STEWART, an
individual and MOSAYK, INC., a North
Carolina corporation

Defendants,

"Pro Se Defendant"

CIV. ACTION NO:

07CV 3786

Defendant, Michael Nnamdi Stewart, having an address at 4649 Vendue Range Drive, Raleigh, North Carolina 27604, is responding to New York State Department of Economic Development (NYSDED), f/k/a the New York State Department of Commerce, hereinafter referred to as Plaintiff, Complaint and Demand for Jury Trial:

MOTION FOR DISMISSAL

1. Defendant, Michael Nnamdi Stewart ("Pro Se" Defendant) in response to the New York State Department of Economic Development ("Plaintiff), please may the Court accept this written filing into the case.
2. There are no grounds for Mosayk, Inc being a named party to these proceedings:
 - (a) Mosayk, Inc no longer exist in name as a corporation and,
 - (b) The trademark filed for "I ♥ NC" is in Michael Nnamdi Stewart's name alone.¹

¹ Trademark Applications and Registrations Retrieval (TARR) <http://tarr.uspto.gov/>; Input Serial Number: 78243227

3. Plaintiff is attempting to have the United States District Court Southern District of New York, overturn the decision of the Trademark Trial and Appeal Board of the United States Patent and Trademark Office (the "TTAB") to dismiss Opposition number 91162024.²

GROUND CAPABLE OF RESOLUTION WITHOUT TRIAL

4. Plaintiff still has not established evidence ascertaining registration of their exclusive rights to the phrase and/or logo "I Love" and/or "I♥." Plaintiff could not provide such evidence because the United States Patent and Trademark Office has allowed other mark similar to the plaintiff's mark(s) to be registered prior and no unfavorable results have harmed the plaintiff's mark(s) or their financial goodwill.³ Notably there were approvals for a Registration for I ♥ NEW YORK PIZZA, granted on December 7th, 1999 and two Principal Registrations for I ♥ SB, granted on September 27th, 2005 and November 15th, 2005.⁴
5. Defendant admits the I ♥ NY mark is synonymous with the state of New York, but plaintiff did not prove the I ♥ NC mark is synonymous with the state of New York or its program to promote travel and tourism. The plaintiff has never clearly established how these legal proceeding benefits the taxpayers of the State of New York or how the defendant is using the I ♥ NC mark to make the public believe the plaintiff's and defendant's marks are related.

² [View Attached (17 pages) Decision to Opposition No. 91162024 before Secherman, Administrative Trademark Judge.]

³ Registration Numbers: 2297518; 2982434; 1294522; 1828516; 2416975; 2788215; 1319495; 2321795; 2524339; 1234075, etc.

⁴ Registration Numbers: 2982434; 3001095; 3014967

GROUND FOR DISMISSAL OF CIVIL ACTION

6. Defendant denies the claims of “There is a Likelihood of Confusion between the Parties’ Marks” because plaintiff’s mark is used “ornamentally on goods.”
Trademark laws protect works when they are used to identify a product or service; plaintiff is trying to only protect the aesthetics of the work as if it was a copyright.
7. Defendant promotes his trademark products, so the public clearly knows the origin of the merchandise and never has the defendant associated the I ♥ NC mark with the plaintiff’s mark(s).
8. Plaintiff does not own the phrase “I LOVE,” which no entity solely possesses or should ever be able to own because it is *public domain* and the First Amendment protects the right to parody.⁵
9. Plaintiff should abandon all notions of:
 - a. Trademark infringement,
 - b. Trademark dilution,
 - c. Common law trademark infringement,
 - d. Common law unfair competition;
10. Plaintiff’s complaint is an effort to needlessly protect their mark(s) from a non-competitor, trying to force the United States District Court Southern District of New York, to set a precedent in overturning the Trademark Trial and Appeal Board of the United States Patent and Trademark Office’s ruling without cause.

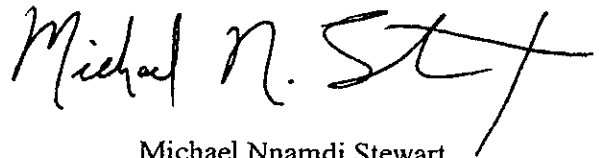
⁵ “BRAND BATTLES: New York ♥ It’s Trademark” from Business Week Magazine, July 2005.
Link: http://www.businessweek.com/magazine/content/05_29/c3943008_mz003.htm

DEMAND FOR DIRECT VERDICT

11. WEREFOR, Defendant request that this Court upholds the Trademark Trial and Appeal Board of the United States Patent and Trademark Office's judgement to "DISMISS" opposition number 91162024 and denying the Plaintiff from any and all course(s) for dispute, jury trial, and claims for relief.⁶

Dated: May 30, 2007

Respectfully Submitted,

A handwritten signature in black ink, reading "Michael N. Stewart". The signature is stylized, with the first letters of each word being capitalized and prominent. The "S" in Stewart is particularly large and loops around the end of the signature.

Michael Nnamdi Stewart
Citizen of the United States of America

⁶ <http://ttabvue.uspto.gov/ttabvue/>